



Paper No. 4

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JUN 19 2002

OFFICE OF PETITIONS

In re Application of :
Paul J. Rudeck et al. :
Application No. 10/072,015 : **DECISION REFUSING STATUS**
Filed: February 7, 2002 : **UNDER 37 CFR 1.47(a)**
Attorney Docket No. MIO 0053 VA :

This is in response to the petition filed under 37 CFR 1.47(a)¹ on February 7, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on February 7, 2002 with a declaration naming Paul J. Rudeck, Francis Benistant and Kelly Hurley as joint inventors and signed only by joint inventors Rudeck and Hurley but not by joint inventor Benistant. The present petition was also filed, in which petitioners assert that "efforts to contact joint inventor Benistant to execute the papers required for filing this patent application by first-class mail at his last known address have been unsuccessful."

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

¹ A petition under 37 CFR 1.47(b) is inappropriate in this instance since one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) and (3). In regards to item (1), petitioners have not submitted sufficient evidence to prove that a copy of the application was sent or given to the non-signing inventor. Petitioners must show proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) were sent or given to the non-signing inventor for review.² Petitioners should provide a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Petitioners must also present proof that the non-signing inventor refuses to sign the declaration. If there is a written refusal, a copy of the written refusal should be submitted with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (3), while the petition indicates that a check was enclosed in the amount of \$130.00 for payment of the fee required by 37 CFR 1.17(i), no such payment is found in this application file.

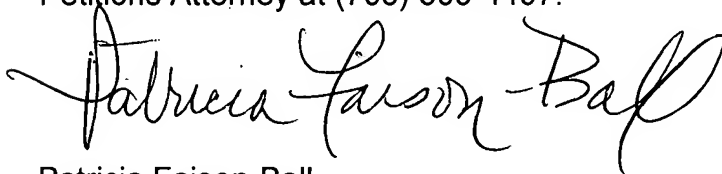
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

²MPEP 409.03(d).